

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of § 73.202(b) )  
Table of Allotments, ) RM -  
FM Broadcast Stations )  
(Milledgeville, Georgia) )

To: Chief, Policy and Rules Division  
Mass Media Bureau

RESPONSE TO OPPOSITION

Radio Perry, Inc. ("Radio Perry"), by its attorneys, hereby submits its Response to the Opposition to Petition for Reconsideration filed by Preston W. Small, ("Small") in the above-referenced matter, stating as follows:<sup>1</sup>

Radio Perry has fully set forth its arguments in its petitions for reconsideration and for dismissal, and need not restate them. Two matters raised by Small's opposition pleadings do, however, warrant comment, as discussed below.

<sup>1</sup> Radio Perry has requested a rulemaking which would substitute Channel 264A for 264C3 at Milledgeville, Georgia, and thereby enable it to upgrade the facilities of its Station WPGA-FM, Perry, Georgia. Rather than initiate such rulemaking, the Mass Media Bureau instead sent a letter to Small, affording him an opportunity to moot Radio Perry's request by filing a Form 301 application for Channel 264C3. Radio Perry has petitioned for reconsideration of such letter and for dismissal of the application filed by Small pursuant to such letter. Small has opposed each petition, and Radio Perry is responding thereto.

First, Small recites in his "Opposition to Petition for Reconsideration" that he filed two extension requests indicating that his substantial delay in constructing an upgraded station was involuntary and due to his inability to obtain a suitable transmitter site. (Opposition to Petition for Reconsideration, page 2, note 2.) Although Radio Perry has not been able to obtain copies of such pleadings from the Commission, review of such pleadings by the Commission staff itself should be undertaken in connection with this matter: If those extension requests lack the substantiating details or documentation which regularly are required by the Commission, such details and documentation should be required at this point. At the least, Small must support such claim with a detailed description of his own efforts to obtain a suitable site, with the affidavit of a local real estate broker who sought to obtain a site on Small's behalf or with some other reliable support for the claim advanced in his extension requests and repeated in his Opposition to Petition for Reconsideration. The need for such basic support is particularly appropriate in this case, where Small claims that he could not obtain a site for almost two years -- and then found one within the 30-day deadline established by the Bureau's letter. Certainly, if he has not already done so, Small has the obligation to fully explain this matter, and the Bureau has the duty to demand such explanation before it dismisses Radio Perry's petition for rulemaking or considers Small's application for a permit to construct upgraded facilities.

Second, a review of its records indicates that, as noted by Small, Radio Perry erred when it stated that it withdrew its own petition to upgrade WPGA-FM's channel when Small withdrew his request to relocate his upgraded facility. In fact, Radio Perry withdrew its petition after Small's initial proposal was filed, because such proposal would have required Radio Perry to accept a site restriction which would have sacrificed most of the benefits of the contemplated upgrade. When Small then proposed to relocate his facility, Radio Perry saw a new opportunity to improve its operations on its current channel, but could not file an application because Small shortly thereafter withdrew his modified proposal and again proposed to use his initial site. While Radio Perry regrets its error, its point remains valid: the proposal which Small made and then failed to implement has precluded Radio Perry from improving its service.

Accordingly, Small's opposition pleadings do not resolve the material questions which have been raised by Radio Perry with regard to this matter.

Respectfully submitted,

RADIO PERRY INC.

By:



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Its Counsel

Dated: September 28, 1993

CERTIFICATE OF SERVICE

I, Tracy A. Holden, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 28th day of September, 1993, I caused copies of the foregoing "RESPONSE TO OPPOSITION" to be delivered by first class mail, postage prepaid, to the person named below:

Timothy E. Welch, Esq.  
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Tracy A. Holden